



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-U-

DATE: MAR. 16, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a public university, seeks to classify the Beneficiary as an individual of exceptional ability in the sciences, arts, or business, or as a member of the professions holding an advanced degree, under the second-preference, immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This second preference classification makes immigrant visas available to foreign nationals with a degree of expertise significantly above that normally encountered in the sciences, arts, or business or an academic degree above that of baccalaureate. The Petitioner also seeks designation under 20 C.F.R. § 656.5, Schedule A, Group II. Schedule A, Group I as well as Group II, is comprised of certain occupations for which the Department of Labor (DOL) has determined there are not sufficient United States workers who are able, willing, qualified, and available, and that the employment of these foreign nationals will not adversely affect the wages and working conditions of similarly employed United States workers. *Id.*

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary met at least two of the seven listed criteria for Schedule A, Group II. Additionally, he found that the Beneficiary's work during the year before the filing of the petition did not require an individual with exceptional ability, nor did the position sought.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary meets five of the seven listed criteria and that her work in her field did and will require exceptional ability.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Second preference immigrant visas are available for qualified individuals who are advanced-degree professionals or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2) of the Act. Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

Every petition under this classification must include one of the following three documents: (1) an individual labor certification from the Department of Labor, (2) an application for Schedule A designation, or (3) documentation to establish that the beneficiary qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. 8 C.F.R. § 204.5(k)(4)(i).

Schedule A, Group II designation requires that a petitioner submit evidence of the beneficiary's exceptional ability in the sciences or arts as demonstrated by widespread acclaim and international recognition from recognized experts in the field. 20 C.F.R. § 656.15(d)(1). In addition, the petitioner must provide evidence meeting at least two of seven criteria (for example awards, memberships, published material, and contributions). 20 C.F.R. § 656.15(d)(1)((i)-(vii). Beyond demonstrating widespread acclaim and international recognition, the documentation presented must show that the position the beneficiary has worked in the year prior to filing and the one sought both require an individual of exceptional ability. *Id.* As with any filing for an employment-based immigrant that requires an offer of employment, this petition must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2).

II. ANALYSIS

The Petitioner indicated on Forms I-140 and ETA 9089 that it seeks to employ the Beneficiary as an assistant professor at an annual wage of \$67,000. Part H of the ETA 9089 reflects that the position requires a Ph.D. in counselor education or a related field, with no experience requirements and no alternate combination of education and experience listed as acceptable. The record also reflects that the Beneficiary has held this position with the Petitioner since August 2014.

The Director did not contest that the Beneficiary, who possesses a qualifying Ph.D. degree, is a member of the professions holding an advanced degree, but denied the petition on two other grounds. First, he determined that the Petitioner did not establish that the Beneficiary met any of the seven listed criteria under the Schedule A, Group II regulations. Second, he found that the Beneficiary's work during the year prior to filing the petition did not require exceptional ability, nor will her intended work in the United States. For the reasons discussed below, while we withdraw the Director's decision on the first ground, we agree that the Beneficiary's previous employment did not, and intended work will not, require exceptional ability. In addition, the record does not establish that the Beneficiary enjoys the widespread acclaim and international recognition required for Schedule A, Group II designation.

A. Evidentiary Criteria

To establish the Beneficiary's eligibility, the Petitioner must demonstrate, among other things, that the Beneficiary qualifies as an individual of exceptional ability in the sciences in accordance with the regulatory provisions found at 20 C.F.R. § 656.15(d)(1). We have reviewed all of the evidence in the record of proceedings, and find that the Beneficiary has met two of the seven evidentiary

criteria found at 20 C.F.R. § 656.15(d)(1)(i)-(vii). Specifically, the Beneficiary has served as a judge of the work of others in her field in her role as a peer reviewer for [REDACTED] and [REDACTED] and has authored scholarly articles in her field in international professional journals, [REDACTED] and [REDACTED]. However, the record does not establish that the Beneficiary has met the remaining criteria claimed.

Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields.
20 C.F.R. § 656.15(d)(1)(ii)

The record establishes that the Beneficiary is a member of three honor societies, but does not establish that these societies require outstanding achievement of their members, or that membership is judged by recognized international experts in their fields. All three require a minimum number of academic semesters completed and a minimum grade point average or class standing, but does not demonstrate that these requirements, by themselves, can be considered to be outstanding achievements. In addition, the record does not establish that recognized international experts are involved in the review of candidate's achievements. The bylaws of [REDACTED] submitted on appeal, indicate only that membership nominations approved by each chapter are forwarded to the society's headquarters.

On appeal, the Petitioner also asserts the Beneficiary's membership on its [REDACTED]. However, the record does not establish that this can be considered as an international association, as its membership is comprised of representatives from each of the Petitioner's colleges and one non-scientist "from the community," and the scope of its review is limited to research projects conducted at [REDACTED]. In addition, Section 2.2 of the document titled [REDACTED] indicates that a variety of criteria are used when determining the makeup of the Board, and does not establish that outstanding achievement is a requirement.

The Petitioner also asserts on appeal, that the Beneficiary's service on conference committees and as a panel member for various meetings and workshops should be considered under this criterion. Even if we were to accept that participation in temporary committees and panels can be considered to qualify as membership in associations, which we do not, it has not been established that outstanding achievements are required to participate in these roles. The record also does not establish how the Beneficiary was selected to appear as a speaker or panelist, or shed light on who approved her selection or invitation. Regarding the Beneficiary's service as a member of the [REDACTED] 2012 and 2013 conferences, the Petitioner submitted emails which invite the Beneficiary to participate and indicate that "we count on our members to review the submitted abstract papers," but these do not describe any selection process for those invited, and thus do not establish that outstanding achievement was a prerequisite for participation on the committee.

Published material in professional publications about the alien, about the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material. 20 C.F.R. § 656.15(d)(1)(iii)

The Petitioner submitted an article about the Beneficiary and her work which was published in [REDACTED] a newspaper serving the island nation of [REDACTED]. In his decision, the Director held that the Beneficiary did not meet this criteria because the article does not provide the author's name. On appeal, the Petitioner asserts that despite the plain language of the regulations, the evidence need not include the name of the author so long as the credibility and probability of the material can otherwise be established, and that the name of the author need not be a person. While the Petitioner has submitted an article describing [REDACTED] policy and rationale for using anonymous bylines in its publication, it has not submitted evidence of any such policy at [REDACTED]. The record does not support an interpretation of the regulation that would be contrary to its plain meaning.

The Petitioner also asserts that the Director erred by adding a requirement not in the regulations when he held that [REDACTED] had not been shown to be a "professional publication in the field of educational counseling." The Petitioner is correct that the regulation does not include the language used by the Director in his decision, but it has not submitted evidence to establish eligibility. The Petitioner notes that an interpretation of "professional publications" that would limit this criterion to publications written for or about the field for which certification is sought would eliminate consideration of material published in many media and newspaper outlets. However, the focus of the requirements in several other criteria within the regulations, as well as the "widespread acclaim and international recognition" prong discussed below, is on the beneficiary's status within his or her field, not within the general public.¹ Therefore, limiting the consideration of evidence submitted under this criterion to those publications which are in or about the field for which certification is sought is consistent with the plain language of the criterion.

Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought. 20 C.F.R. § 656.15(d)(1)(v)

The Petitioner submitted several support letters written by her colleagues and mentors as evidence of her original contributions of major significance in the field of counseling education. On appeal, the Petitioner asserts that the Director misconstrued this evidence in his decision. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence

¹ See, for comparison, the regulation at 8 C.F.R. § 204.5(h)(3)(iii), one of ten criteria which may be met by a foreign national seeking classification as an Alien of Extraordinary Ability, which requires the submission of evidence of "[P]ublished material about the alien in professional or major trade publications or other major media..." (emphasis added).

of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500 n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence.

In general, the letters from [REDACTED] and [REDACTED] note that the Beneficiary has published articles in international scientific journals, served as a peer reviewer for journals and conferences, and spoke at workshops and in panel discussions. All of these scholarly activities are substantiated by additional evidence in the record, but the record does not establish that they can be considered to be contributions of major significance. In her letter, [REDACTED] states that professionals in the field of counselor education "around the world have gained illumination and cultural competencies on how to counsel West Indian individuals," but as indicated in the Director's decision, the record shows that the Beneficiary's publications on this topic have garnered limited attention in the form of citations by other scholars. Similarly, [REDACTED] and [REDACTED] point to the Beneficiary's contributions to a textbook and an encyclopedia in the field, but the record does not demonstrate that the use of these materials, and specifically those sections authored or co-authored by the Beneficiary, has become so widespread in the field to the point where they can be considered to have made a contribution of major significance.

B. Widespread Acclaim and International Recognition

The submission of evidence under 20 C.F.R. § 656.15(d)(1)(i)-(vii) does not, by itself, establish eligibility for the benefit. While the Beneficiary has satisfied the necessary two criteria, the record does not reflect that she enjoys widespread acclaim and international recognition accorded by recognized experts in her field 20 C.F.R. §656.15(d)(1). Specifically, the evidence shows that the Beneficiary has served as a peer reviewer for scholarly journals on at least two occasions, and served as a reviewer of papers submitted for presentation at scholarly conferences in her field. However, peer reviewed journals rely on numerous volunteers to judge the manuscripts that have been submitted for possible publication, and the Petitioner has not demonstrated how this work by the Beneficiary, and her service as a reviewer for scholarly conferences, indicates she possesses widespread acclaim and international recognition.

Moreover, the Petitioner has established that the Beneficiary has published several articles in international professional journals in her field, but does not demonstrate that this work has been received by other scholars in her field to an extent rising to widespread acclaim. In addition, the Petitioner has not shown that the Beneficiary's contributions to a four-volume encyclopedia and a textbook have gained widespread use as reference materials in her field or otherwise brought her international recognition.

The remaining evidence also does not demonstrate the Beneficiary's eligibility for the requested classification. The single article about the Beneficiary and her work described the Beneficiary's visit with a group of [REDACTED] students and faculty, and her facilitation of mental health

workshops during the visit. The evidence does not establish that the content of this article, or its publication in a newspaper of unknown circulation, is indicative of widespread acclaim and international recognition.

Finally, the submitted evidence, including reference letters from other scholars in the Beneficiary's field, does not corroborate the Petitioner's claims of her original and significant contributions in her field. As discussed above, those letters' statements about the Beneficiary's international recognition and her status as a worldwide authority in her field are not substantiated by documentary evidence in the record.

C. Qualifying Work Experience and Prospective Position for Schedule A, Group II

The regulation at 20 C.F.R. § 656.15(d)(1) further requires that the Petitioner must submit "documentation showing [the Beneficiary's work in his field] during the past year did, and [her] intended work in the United States will, require exceptional ability." In the year before the filing of the petition, the Beneficiary was employed in the same position for which the Petitioner seeks to employ her, that of assistant professor in [REDACTED] Department of Counseling & Special Populations. Part H, Item 11 of the ETA 9089 submitted in support of the petition describes the duties of this position as teaching graduate courses in counseling, school counseling and/or clinical mental health counseling; maintaining an active research and publication agenda; and assisting in the coordination of the counseling program.

In response to the Director's request for evidence, the Petitioner submitted a letter from [REDACTED] Human Resources Director of Compensation & Employment, which further elaborated on the requirements and duties of this position. [REDACTED] states that the Beneficiary's current salary of \$71,228 exceeds the offered salary, and that "[T]he position requires an individual with a high level of specialized expertise and exceptional ability in mental health counseling so that the University can continue to prepare our students to provide much needed mental health counseling to special population communities." However, as noted by the Director, the goal of preparing students is central to the mission of every educator hired by the Petitioner and other institutions, and neither this statement nor the minimum requirements listed on the ETA 9089 are indicative of any requirements above those normally expected of a college or university assistant professor. In addition, it is common, and often expected, for college and university faculty to continue to pursue research and publish their findings while teaching classes.

On appeal, the Petitioner states that the Director failed to consider other factors such as its diverse student body, which makes the Beneficiary's expertise critical for the offered position, and how mental health conditions in the Petitioner's local area require an educator "with a record of success in educating the mental health professionals of the future." However, the record does not substantiate that these factors are unique to the Petitioner and would justify a requirement of ability beyond that normally required for educators in this field.

III. CONCLUSION

In considering the totality of the Petitioner's evidence, the documentation submitted establishes that the Beneficiary possesses an advanced degree, and meets two of the seven regulatory criteria at 20 C.F.R. §656.15(d)(1). However, the Petitioner has not demonstrated that the Beneficiary enjoys widespread acclaim and international recognition from recognized experts in her field, or that the Beneficiary's employment in the last year required, and prospective employment will require, exceptional ability.

ORDER: The appeal is dismissed.

Cite as *Matter of L-U-*, ID# 1006291 (AAO Mar. 16, 2018)